

**WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO  
NEW ENGLAND CONTAINER  
d/b/a RICHMOND BARREL & BOX  
EPA ID No. VAR000620450**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and New England Container d/b/a Richmond Barrel & Box, for the purpose of resolving certain violations of environmental law and/or regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.

6. “New England Container” means New England Container d/b/a Richmond Barrel & Box, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the New England Container facility located at 1705 East Commerce Road, in Richmond, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “VHWMR” means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq*
10. “CFR” means Code of Federal Register.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. New England Container owns and operates a container manufacturing facility in Richmond, Virginia. The facility is a large quantity generator of hazardous waste.
2. On August 21 and August 29, 2002, DEQ conducted inspections of New England Container. Based upon the observations of these inspections, DEQ issued Notice of Violation (NOV) No. 2002-10-PRO-601 on October 16, 2002 for violations of hazardous waste management; pre-transport requirements; manifest; record keeping and reporting; training; and contingency plan and emergency procedures deficiencies.
3. On November 7, 2002, the facility met with the Department to discuss the above violations.
4. The Department received a letter dated January 8, 2003, stating that full RCRA training would be completed on January 31, 2003 at the facility. With the completion of the RCRA hazardous waste training, all deficiencies cited in the October 16, 2002, Notice of Violation have been addressed.

### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders New England Container, and New England Container agrees to pay a civil charge of \$5,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia” and shall be delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, New England Container shall include its Federal Identification Number.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of New England Container for good cause shown by New England Container, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to New England Container by DEQ on October 16, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, New England Container admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. New England Container consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. New England Container declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by New England Container to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. New England Container shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. New England Container shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. New England Container shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and New England Container. Notwithstanding the foregoing, New England Container agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to New England Container. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve New England Container from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, New England Container voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

New England Container voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Richard A. Costa  
Vice President Operations

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(Name)

\_\_\_\_\_ of New England Container, on behalf of the Corporation.  
(Title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.